

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA :Case No. 20-cv-1396-MMB  
4 :  
5 Plaintiff, :  
6 v :  
7 THE DORCHESTER OWNERS :  
8 ASSOCIATION :  
9 Defendant. :Philadelphia, Pennsylvania  
:November 3, 2022 at 10:06 a.m.  
:  
: . . . . .

9 TRANSCRIPT OF ORAL ARGUMENT re: Damages  
10 BEFORE THE HONORABLE MICHAEL M. BAYLSON  
11 UNITED STATES DISTRICT COURT JUDGE

11 APPEARANCES:

12 FOR THE PLAINTIFF

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5 ALSO PRESENT:  
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8  
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1 (On-the-record)

2 THE COURT: Good morning everyone.

3 MR. SACKS: Good morning, Your Honor.

4 THE COURT: Please be seated. Okay. We are  
5 here this morning for a hearing in a long-running case in  
6 this Court, United States versus Louise Hamburg et al  
7 versus the -- United States and Louise Hamburg versus the  
8 Dorchester Owners Association, Civil Action 20-1396.

9 Present for the United States is Noah Sacks,  
10 good morning to you. Samantha Ondrade, good morning to  
11 you.

12 MS. ONDRADE: Good morning, Your Honor.

13 THE COURT: And Timothy Moran.

14 MR. MORAN: Good morning, Your Honor.

15 THE COURT: Good morning to you. Present for  
16 the Dorchester, Paul Troy and Thomas Zimmerman, good  
17 morning to you.

18 MR. TROY: Good morning, Your Honor.

19 MR. ZIMMERMAN: Good morning, Your Honor.

20 THE COURT: Okay. I just want to tell you that  
21 I've set aside two hours this morning for this hearing  
22 and I will give you a list of topics that I intend to  
23 cover. But I'm happy to add other ones and I want to  
24 make sure that we cover of -- any issues that counsel  
25 believe are outstanding. And -- but I have to adjourn at

1 -- at noon or very close to noon because we have today  
2 visiting us a group of judges on the Federal Circuit.  
3 And we have arranged a lunch in their honor and I want to  
4 be part of that. So I think two hours should be  
5 sufficient. And I may take a very short break in the  
6 middle if -- then at any time any counsel need a break,  
7 okay?

8 You know, here are the topics that I want to go  
9 over. First of all, I want to respond to the questions  
10 that the government raised in a communication yesterday  
11 when you requested a telephone conference concerning  
12 what's going to happen today. And I want to respond to  
13 that. I was unable to accommodate you. I was out of  
14 town at a judicial conference and traveling, and it was  
15 just not feasible to have a last minute telephone call,  
16 nor did I think it was necessary.

17 The second question -- the second issue that I  
18 want to go over relates to the Halperns' claim and  
19 considering the timeline. I appreciate the government's  
20 memorandum yesterday that if the Halperns and the  
21 Dorchester agree to keep -- agree to a settlement and  
22 agree to keep it confidential, the government will not  
23 stand in the way or attempt to prevent that from taking  
24 place.

25 Third, I would like to have some discussion of

1 the -- of some of the issues pertaining to the pending  
2 motions. And well, let me turn to Mr. Sacks, this is  
3 your letter yesterday that -- and by the way, I'm also  
4 going to cover the questions that were in my letter of  
5 October 20th that I sent out to what would be -- the --  
6 that's obviously included, okay.

7 All right. This is Document 275 that's filed  
8 yesterday, November 2nd entitled, The United States  
9 motion for telephone conference and clarification of the  
10 Court's November 1st, 2022, order E.C.F. 274. All right.  
11 Question Number One and I may not read this verbatim;  
12 this returns to after the jury verdict, the Court entered  
13 a favor -- judgment favor of Defendant Dorchester on all  
14 claims brought by or on behalf of Plaintiff of Hamburg.  
15 What remains in claim or defense in this matter does the  
16 Court's chronology events and the statements pertain to.

17 Okay. Louise Hamburg was a party. This is  
18 partially and also -- also an answer to your question --  
19 your last question about Louise Hamburg. Louise Hamburg  
20 was a party in the first trial. The jury's verdict was  
21 adverse to her. The record does not -- the record is  
22 clear that she did not file any post-trial motion of any  
23 kind, although she could have. She was represented by a  
24 counsel.

25 So I -- in my view, the law requires me to say

1       that she is no longer a party and she doesn't have any  
2       rights. Now, that -- that's how I answer that. But your  
3       answer -- your question Mr. Sacks is broader than that.  
4       It's what remaining claim or defense? Well,  
5       specifically, the Dorchester has an outstanding post-  
6       trial motion for, I think, both new trial and judgment  
7       notwithstanding the verdict. Is that right, Mr. Troy?

8               MR. TROY: That is correct, Your Honor.

9               THE COURT: Okay. And those have not been real  
10       -- ruled on and we will turn to those motions before the  
11       morning is over, I assure you.

12              Question Number Two, does the Court contemplate  
13       making findings of fact for purpose pursuant to the  
14       Federal rule of Civil Procedure 52A on the entries in the  
15       chronology. Okay. The -- let me just say why I  
16       developed this chronology. At one of our prior hearings  
17       Mr. Sacks, right, and I can't point to which specifically  
18       in the record right now. I had posed some questions to  
19       counsel and one of the questions, started out was, when  
20       certain things happened. And the government never  
21       answered them.

22              And as far as I believe, as far as the post-  
23       trial is concerned, the government has not specified  
24       certain dates, one which that I think are important, on  
25       which certain events did or did not happen. And that is

1           why in my letter of October 20th which is on the agenda  
2           for today, one of the questions is, you know, what is  
3           your position as to when certain things took place.

4                       Now, so to the extent that the record shows the  
5           -- the trial record, that contains either testimony or  
6           exhibits that were admitted into evidence. I think I can  
7           rely on those without making any findings of fact. And  
8           there are certain -- and there are certain documents that  
9           I believe are in the nature of public records that I am  
10          not sure were admitted into evidence. And so the  
11          question is to what extent can I rely on those or not.

12                      The -- but if something is -- is in the record,  
13          I don't see a need for me to make findings of fact. I  
14          can just say this is an, you know, an exhibit that was  
15          admitted. And I can rely on general legal principles as  
16          to what impact it may have on the post-trial motions.  
17          But that -- but having had a jury trial and having had  
18          the jury return a verdict, I don't think the Judge has  
19          any right to make findings of fact that go beyond what  
20          the jury's verdict was. So that's my -- but in my view,  
21          but having said that, in my view the fact that the jury  
22          decided against Louise Hamburg and in favor of the  
23          Dorchester does carry with it a number of conclusions.  
24          And we can talk about some of those today or have a  
25          briefing about it.

1           So your last question -- your next question was  
2           -- is what legal standard or evidentiary standard governs  
3           the Court's chronology and the parties additions or  
4           revisions to the chronology. Well, first of all, I want  
5           the chronology here to be accurate, okay? So if I have  
6           put the date here that either or both of you think is  
7           wrong, you know, I want to know about it.

8           Secondly, if I have included -- and -- but by  
9           the way, we did some research and I thought most of the -  
10          - and I thought all of the dates here were accurate. And  
11          also the discussion that I sent to you was this -- that  
12          was a summary but I also thought it was inaccurate. But  
13          you're -- and I welcome your comments on that.

14          And I have sources for each of these entries.  
15          But I don't intend to give those to counsel. I want  
16          counsel to yourselves do whatever research is necessary  
17          and -- and that's why I said in my order that I will  
18          allow time after this hearing for you to complete the  
19          record on that point.

20          So the standard that I'm going to use is that  
21          developed by the Third Circuit and on by the -- by Rule  
22          52 in other Courts as to what a Judge can consider on  
23          post-trial motions and I'll have more to say about that  
24          before the -- before the morning is over. But I -- I  
25          don't -- I mean I intend to rely on established legal



1 standards and -- and so forth. But I have to say that  
2 having reviewed some of this in some detail, I believe  
3 Rule 11 may take -- may play a role in the post-trial  
4 proceedings that we are going to have here.

5 All right. The next question is as follows.  
6 Are the existing entries in the chronology, as well as  
7 any additions or revisions made by the parties limited to  
8 testimony presented at trial and trial exhibits admitted  
9 in as evidence during the June 6-10, 2022, jury trial in  
10 this matter.

11 The -- the basic answer to that is yes, that I  
12 intend to be limited to something that is in the trial  
13 record either testimony or an exhibit that was admitted.  
14 However, there are some documents that in the chronology  
15 or some entries in the chronology for which I could not  
16 find a -- or have not yet found a -- an evidentiary  
17 exhibit that was admitted. And I'll -- I'll come back to  
18 that when we get to the chronology. And -- and -- but  
19 some of them may qualify as public records, particularly  
20 if they're HUD documents.

21 Okay. The next question, can the Court  
22 supplement the chronology to indicate the admitted trial  
23 exhibit and trial transcript page numbers to which the  
24 entries refer. I will -- I will be -- and I will do that  
25 after counsel submit their own view of what the facts are

1 in the chronology. All right. And -- but one question,  
2 and maybe you did intend this, is why did I develop a  
3 chronology. Well, as I said before, and Mr. Sacks, the  
4 primary reason is that I had previously asked the  
5 government when certain things took place and I didn't  
6 get an answer. So that's why that's on the list for  
7 today. But I -- we've been spending some time on this  
8 and I wanted to give counsel the benefit of the  
9 chronology that I had come up with that I -- I think is  
10 accurate.

11 Okay. Last question, should plaintiff-  
12 intervener, Louise Hamburg, and/or her legal counsel  
13 participate in preparing or submit a response to the  
14 Courts order E.C.F. 274, well, I just answered that.  
15 Okay. But in my view under the rules, she's no longer a  
16 party since she did not file any post-trial motions.

17 Okay. Now -- all right. Now we're going to  
18 turn to my letter of -- just a minute. All right. My  
19 letter of October 30 -- 20, excuse me. October 20th,  
20 2022, re: oral argument questions in the U.S. versus  
21 Dorchester case, all right. And that pertains to this  
22 hearing.

23 So the first question relates to the Halperns'  
24 claim. And as you recall, I had asked each party to  
25 prepare timelines and then go over the timelines with

1       each other to try and come up with a joint timeline. And  
2       I gather, Mr. Troy you have not -- you've been unable to  
3       do that so far?

4               MR. TROY: It -- there is a not a joint  
5       timeline, Your Honor. I think we each submitted  
6       different but very similar --.

7               THE COURT: Yes.

8               MR. TROY: Because of the key fob records. It  
9       forced everybody's hand. That's --.

10              THE COURT: Okay. Well, Mr. Sacks, what's your  
11       view? I mean, your -- the base -- and look, I have not  
12       studied your -- your -- your individual timelines to be  
13       honest. But I -- well, I know you did submit them.

14              MR. SACKS: Yep.

15              THE COURT: So do you -- is there a -- a lost  
16       hope that I -- you could agree on a single document?

17              MR. SACKS: Your Honor, I don't -- I don't  
18       believe we're going to be able to agree on -- on a single  
19       document. We submitted our timeline and cites to the  
20       record and to the transcript. And I -- I think  
21       Dorchester disputes some of that. So I don't -- I don't  
22       feel that there is a way for us to reconcile that.

23              MR. TROY: Your Honor, I would say I don't  
24       think to the extent there's differences. I don't know  
25       that there are differences that are going to be very

1 material. And I say that only because the Dorchester  
2 could only respond and do a timeline as to what the key  
3 fob records showed. The Halperns' timeline included  
4 things in their personal knowledge before there were key  
5 fob records available.

6 THE COURT: Okay.

7 MR. TROY: Yeah.

8 THE COURT: All right.

9 MR. SACKS: Your Honor, the -- the Dorchester  
10 disputes that and even told the Halperns that they had to  
11 use the freight elevator in the rear entrance when the  
12 evidence clearly shows that this happened. I -- there's  
13 a -- there's a factual dispute I don't think we're going  
14 to be able to come up with the -- a joint statement on  
15 those.

16 THE COURT: All right. Okay. All right.  
17 Well, all right. I have -- okay. But I do want to know  
18 what you -- what you -- what Mr. Troy you believe is the  
19 -- the -- well, strike that.

20 I'd like to know, Mr. Troy, can you tell me the  
21 first date that you believe that's damage to -- the  
22 Halperns were damaged. Not on the map but just as of a  
23 date, that they -- the first time they suffered some  
24 damage by reason of the Dorchester's action either the  
25 Dorchester refusing to discuss, or meet, or -- or issue

1 any order or otherwise.

2 MR. TROY: Your Honor, because --

3 THE COURT: Can you give us a date?

4 MR. TROY: I -- I cannot give you a date when I  
5 would concede -- I do not concede at all that the  
6 Halpern's were ever damaged.

7 THE COURT: All right. Okay.

8 MR. TROY: Or -- .

9 THE COURT: Okay. That's a -- I know, that's a  
10 -- right.

11 MR. TROY: Yeah.

12 THE COURT: What's the government's first date?

13 MR. SACKS: December 1st, Your Honor.

14 THE COURT: December 1st?

15 MR. SACKS: December 1st, 2018.

16 THE COURT: 20 -- September.

17 MR. SACKS: December 1st, 2018. December, Your  
18 Honor.

19 THE COURT: Okay.

20 MR. SACKS: That's thirty days after the  
21 Halperns -- approximately thirty days after the Halperns  
22 first filed their first request for a reasonable  
23 accommodation.

24 THE COURT: Okay.

25 MR. SACKS: That document -- in that document

1           Dorchester promised in writing that they would respond  
2           within thirty days.

3                   THE COURT: Right. Okay.

4                   MR. SACKS: And they did not do so.

5                   THE COURT: All right. What is the date on  
6           which you would agree that the damage with the Halp --  
7           the damages to the Halperns terminated if, or is it still  
8           going on?

9                   MR. SACKS: Regarding economic damages?

10                  THE COURT: Yes.

11                  MR. SACKS: The date is January 11th, 2022, and  
12           that's the date --.

13                  THE COURT: January 11th, 2022?

14                  MR. SACKS: January 11th, 2022, Your Honor.

15                  THE COURT: All right.

16                  MR. SACKS: And that's the date that Dorchester  
17           finally release the Halperns from a discriminatory terms  
18           and condition that it imposed --

19                  THE COURT: Okay.

20                  MR. SACKS: -- in -- in May of 2021, granted  
21           their accommodation.

22                  THE COURT: Okay. All right. That's helpful.  
23           All right, now, I appreciate, as I said before that the  
24           government does not concede. Now, Judge -- as I have  
25           said before, I believe Judge Roberts has -- is willing to

1 try and be helpful in this regard. But as I looked at  
2 some recent correspondence, has the Dorchester made any  
3 specific monetary -- I don't want to know the number.  
4 But has Dorchester made a specific offer of damages.

5 MR. TROY: We have, Your Honor.

6 THE COURT: Okay. And did you make that  
7 directly to Mr. and Mrs. Halpern?

8 MR. TROY: No. No, Your Honor. And to be  
9 clear, there was the email that you saw.

10 THE COURT: Yeah.

11 MR. TROY: But there was still the  
12 confidentiality issue was unresolved because, Your Honor,  
13 will recall that the government's position in June and  
14 when we were here last --

15 THE COURT: Yeah.

16 MR. TROY: -- was you can't do confidentiality.  
17 But --.

18 THE COURT: All right. Well, now they've  
19 relaxed that.

20 MR. TROY: Yes.

21 THE COURT: Okay.

22 MR. TROY: And I -- I had called --

23 THE COURT: And I -- I told Judge Strawbridge  
24 that I think -- I thought it was likely the government  
25 would do that.

1 MR. TROY: Yeah. I didn't know. I tried -- I  
2 called Mr. Moran last Thursday to try to get into that.  
3 I didn't get a response and I -- and we didn't know the  
4 government's position on that until they just filed late  
5 yesterday saying --

6 THE COURT: All right.

7 MR. TROY: -- confidentiality was okay.

8 THE COURT: Well, now you know.

9 MR. MORAN: Well I ended up -- you could have --  
10 -- I -- I did not know that you called me. I did not. I  
11 was out of town and I didn't get any message from you.

12 THE COURT: Okay. Well --.

13 MR. TROY: Right.

14 THE COURT: What are the prospects of that  
15 happening today of your making a confidential settlement  
16 offer verbally to the Halperns?

17 MR. TROY: Sure. Mr. -- Mr. Devine though,  
18 he's out with COVID today. And he's available and that  
19 is --

20 THE COURT: Well, I don't see him here. He --.

21 MR. TROY: -- right? Anything is possible now  
22 that confidentiality is -- if confidential settlement is  
23 a possibility.

24 THE COURT: All right. All right.

25 MR. SACKS: Your Honor, when you say



1 confidential settlement, do you mean a settlement that  
2 the Dorchester offers the Halperns that the Halperns are  
3 not free to discuss with the United States?

4 THE COURT: Well, look, I don't want to get  
5 dragged into a dispute here. If --.

6 MR. SACKS: I don't believe the Halperns were  
7 interested in -- in getting a -- an oral offer that  
8 they're not allowed to discuss with us. Now, if you  
9 want, we can -- we can talk to them and we can make that  
10 clear. But our understanding is that they don't want --  
11 they don't want to be left alone in the lurch talking to  
12 the Dorchester without -- without our assistance.

13 THE COURT: Well, the -- the question I had for  
14 you is if that -- say Mr. Devine makes it directly to Mr.  
15 and Mrs. Halpern, okay? If -- if you're -- if you, the  
16 government are okay that they discuss it with you and  
17 they want it to remain confidential, that you would honor  
18 that. That is if your position is that if they tell you  
19 what the amount is, you're -- you're going to tell them  
20 that you object to it being -- you object to it because  
21 of being confidential. In my view, they have the right  
22 to settle themselves. They don't need your approval.  
23 That's my view of the law.

24 MR. SACKS: That's correct, Your Honor, but I  
25 don't believe that they're comfortable going this alone

1 without our assistance after two years of working with  
2 us. That's my understanding.

3 THE COURT: Okay. Well, I'll tell -- and I'll  
4 tell you what. We're -- and let's -- I'm going to drop  
5 this topic angle and we've going to discuss it at sidebar  
6 with the Halperns, okay. That's what we'll do. And  
7 let's go to some other issues and we'll come back to  
8 that, all right.

9 MR. SACKS: Very good.

10 THE COURT: All right. All right. But I -- I  
11 don't want to get into -- well, the -- I'll stop talking  
12 about it right now. All right. Now, the next question  
13 is something that we've discussed before. Has the  
14 statutory requirement that a pattern or practice can only  
15 be found if there was wrongdoing as to a group -- "group"  
16 and how should this Court rule under the absence of any  
17 Supreme Court or Third Circuit authority.

18 Now, I believe that this has been briefed by  
19 both of you, okay? Are any of you were aware since the  
20 last time we talked about this of any new Third Circuit  
21 or other authority you would cite as to whether a -- the  
22 requirement -- the statutory requirement of group is  
23 satisfied by the evidence of this -- in this case.

24 MR. SACKS: Your Honor, the question -- I  
25 believe the question conflates two separate claims that

1 the United States brought and prevailed on. We brought a  
2 pattern or practice claim under 3614(a). That statute  
3 also authorizes a separate theory of liability called the  
4 group of person's theory. We brought that claim as well  
5 and the jury -- the jury was charged on that claim and  
6 the jury found liability as to the Dorchester on that  
7 claim. Those are two separate theories of liability.  
8 And I just wanted to -- to point that out to the Court.

9 THE COURT: Well, what's the first one?

10 MR. SACKS: The first one is a pattern or  
11 practice.

12 THE COURT: Yes.

13 MR. SACKS: And violating Fair Housing Act.  
14 And there is guidance from the Supreme Court and the  
15 Third Circuit on what that means. We know from --.

16 THE COURT: So when you say it's a pattern or  
17 practice and it doesn't require any group to be injured.  
18 Is that right?

19 MR. SACKS: That's correct. The pattern or  
20 practice does not have the word group in it and it does  
21 not have group as an element of -- of that claim.

22 THE COURT: All right. Right. Mr. Troy,  
23 what's your position as to that?

24 MR. TROY: I think plain English fails there,  
25 Your Honor. How can there be a pattern or practice if

1           there isn't more than one -- more than one person. There  
2           necessarily has to be a group.

3                     THE COURT: Right.

4                     MR. TROY: And to be clear, Your Honor, there -  
5           - the evidence before you, there -- and there -- and  
6           there's a difference. There is what was heard in June  
7           and there was what you heard after that which was very  
8           important evidence including the timelines that you saw.  
9           There is no group of persons who was been impacted by any  
10          alleged discriminatory activity.

11                    The Halperns' claim is the only one properly  
12          before this Court, the Minkovich claim, because the  
13          government wasn't involved in negotiations, resolved  
14          confidentially and peacefully so it's not before you.  
15          The Plaintiff's pattern or practice claims, the case they  
16          gave you were all based on racial discrimination in which  
17          an entire class were deprived of public accommodation or  
18          housing going back decades.

19                    The evidence that you heard in this case is  
20          that the Dorchester Owner's Association and there is  
21          several members of unit owners here today. They've  
22          allowed six emotional support animals into the building.  
23          The only one that was denied was Louise Hamburg and the  
24          verdict reflects that is correct.

25                    The only pattern or practice, now that you've

1       heard all the evidence by the Dorchester is one of  
2       inclusion, not discrimination in any way.

3               THE COURT: Okay. All right. Well -- all  
4       right. Of the -- Mr. Sacks, if I were to say that the  
5       requirement of a group was required -- that the statutory  
6       reference to a group is part of this case. The first  
7       question is can I consider Louise Hamburg as being part  
8       of a group in view of the jury verdict against her?

9               MR. SACKS: Yes, Your Honor. You may consider  
10      Ms. Hamburg as part of the group that was discriminated  
11      against.

12              THE COURT: Why? How could I do that if the  
13      jury decided against her on liability.

14              MR. SACKS: Because the only claim that was  
15      brought on behalf of Ms. Hamburg individually was a  
16      reasonable accommodation claim. And the evidence shows  
17      that even though the jury found that she -- she wasn't  
18      due a reasonable accommodation for -- for notice reasons  
19      to the Dorchester, found that she had a disability, and  
20      the -- that the jury were shown evidence that the  
21      Dorchester nonetheless discriminated against her in other  
22      ways in terms of the terms and conditions --

23              THE COURT: Yeah, yeah. You -- you -- no  
24      question you introduced some evidence that's trying to  
25      show that. But the fact of the matter is that the jury

1 found that -- and I've got the verdict sheet right here.  
2 Just give me one minute.

3 MR. SACKS: And, Your Honor, you --

4 THE COURT: All right.

5 MR. SACKS: -- if you -- even putting Ms.  
6 Hamburg aside, if you want to turn back to the group  
7 question, we have guidance from the Supreme Court on --  
8 on that as well.

9 THE COURT: What's that, please?

10 MR. SACKS: And that's the -- if a statute has  
11 a term that's not defined, then we use the common sense  
12 meaning. And the common sense meaning involves turning  
13 to the dictionary for example and I -- in the recent case  
14 called Tanveer versus Tanveer, that's exactly what the  
15 Supreme Court did. It turned to the Merriam Webster --.

16 THE COURT: Do you have a -- do you have a cite  
17 for that please?

18 MR. SACKS: Yes. Tanveer versus -- versus  
19 Tanveer is 141 Supreme Court 486 at Page 491. And there,  
20 the Supreme Court had to define the term appropriate and  
21 there was no statutory definition.

22 So it turned to the Merriam Webster dictionary  
23 and used that definition. And here, Courts are - or  
24 Courts constantly look at dictionaries to define what  
25 terms mean. And here, if you turn to the Merriam

1 Webster, the definition of a group is "two or more  
2 figures, forming a complete unit in a composition." I'll  
3 repeat that, two or more figures forming a complete unit  
4 and a composition. And that is consistent. That is  
5 exactly consistent with the Court's instruction to the  
6 jury where at trial the Court instructed the jury to "use  
7 your everyday common sense meanings as to what is meant  
8 by a group. And that's at -- that's at June 10, the  
9 transcript 1.2.

10 THE COURT: Well, that's -- we got some of the  
11 jury -- as I recall, the jury asked the question and that  
12 was my answer.

13 MR. TROY: That's right. And then you went  
14 further on to state that a group obviously is more than  
15 one. And that's exactly right. A group is more -- a  
16 group is more than one.

17 THE COURT: Okay. Well, let me ask you this.  
18 So you believe, and, you know, I've got the verdict sheet  
19 here. So the jury found a question -- the first question  
20 they found that Louise Hamburg had a mental -- mental  
21 impairment that substantially limited one or more -- one  
22 or more of her major life activities. But then in  
23 question 1A, she -- and they answered no to the question  
24 of whether Plaintiffs had proof that the Dorchester was  
25 informed of and reasonably should have known Louise

1 Hamburg had a disability and needed an E.S.A. because of  
2 her disability. And the answer there clearly was no,  
3 okay? And that was the end of Louise Hamburg. Now, can  
4 I consider Louise Hamburg was part of the group?

5 MR. SACKS: Well, even putting Louise Hamburg  
6 aside, you have Bernie Halpern, you had Cindy Halpern.

7 THE COURT: Well that's my -- my next question.

8 MR. SACKS: Anna Minkovich. You have David  
9 Michigan.

10 THE COURT: You think -- you think a married  
11 couple is a group standing alone?

12 MR. SACKS: Absolutely. Both have standing to  
13 bring claims of the Fair Housing Act, both were injured  
14 by the Defendant's discriminatory conduct. We heard from  
15 them for two days in addition to the trial about how  
16 terrible things were for them because of the Defendant's  
17 discriminatory conduct. They both are aggrieved persons  
18 under the Fair Housing Act and therefore they're both  
19 members of a group.

20 THE COURT: Okay. All right. And -- all  
21 right. Mr. Troy, what's your position about that?

22 MR. TROY: Ab -- absolutely not.

23 THE COURT: But are you familiar with this  
24 case, the Stanford?

25 MR. TROY: I'm sorry.



1 THE COURT: The Stanford case.

2 MR. TROY: The one that they just mentioned?

3 THE COURT: That Mr. Sacks, yeah.

4 MR. TROY: Yeah. That -- well, that was -- so  
5 he was defining the -- the word appropriate apparently.  
6 Your Honor, I am completely comfortable with you using  
7 plain English on pattern, practice, or group, and -- and  
8 you should, and that's the point. There is no group  
9 here. There is no -- nothing. And -- and remember that  
10 when that verdict was rendered, all the jury had heard  
11 was the little bit from the Halperns and the trial in  
12 which we spent ninety-nine percent of our time on Louise  
13 Hamburg. And it was only -- what they heard from the  
14 Halperns on direct exam was they had to commute back and  
15 forth from Ocean City. They weren't able to stay at the  
16 Dorchester or barely -- .

17 THE COURT: Don't go -- don't go all over the  
18 evidence, please.

19 MR. TROY: Okay. But the point being you  
20 learned, this Court learned subsequent to that because of  
21 the timelines we both submitted, because the key fob  
22 records compelled the Hamburgs and the governments to  
23 truthfully represent that they spent -- that they  
24 returned to the Dorchester at their usual time in  
25 October.

1 THE COURT: Wait -- wait a minute. I think you  
2 are going too far. I don't know -- the jury found in  
3 favor of the Halperns, okay? The same verdict that --  
4 sheet that I'm looking at.

5 MR. TROY: Yes.

6 THE COURT: So -- but that was this to -- in my  
7 view, that was primarily as to their individual claim of  
8 delay, would you agree?

9 MR. TROY: That -- yes. With the evidence the  
10 jury had then which is not everything you had subsequent  
11 to that.

12 THE COURT: Well, you know, the evidence --

13 MR. TROY: They submitted --

14 THE COURT: -- at the trial was the evidence  
15 of the trial. On the issue of damages, we had some  
16 additional evidence but the -- the question -- here's the  
17 question that I have for you. The way -- the way the  
18 verdict form was submitted which was without objection if  
19 I recall that because they found against Louise Hamburg,  
20 they didn't consider any questions for -- related to her.

21 Then question number two related to the  
22 Halperns specifically and they answered yes, okay? And  
23 so Two A as well then -- and Two B and they answered yes  
24 to all four questions pertaining to the Halperns. Then  
25 they -- I asked the question number three, as to whether

1           they -- the jury found that the D.O.A. unreasonably --  
2           unreasonably delayed responding to Anna Minkovich, okay?  
3           And they said yes to that, okay.

4                       Then question number four and question number  
5           five, did not use the word group. And the jury answered  
6           yes to the -- to the -- do you find that plaintiffs prove  
7           by a preponderance of the evidence that the D.O.A. made  
8           dwellings at the Dorchester unavailable to people with  
9           disabilities who made it ASA's because of the disability.  
10          Yes. No reference to group there.

11                      Question number five is the saying they're  
12          people with disabilities and they answered yes to that  
13          without any question as to group.

14                      Question number six is -- it also related to  
15          the difference between abled, and disabled, and non-  
16          disabled people. And the jury answered yes to that.

17                      Question number seven, do you find that  
18          Plaintiffs proved by a preponderance of the evidence that  
19          the D.O.A. and, you know, in the pattern or practice of  
20          resistance to permit people of disabilities who needed  
21          A.S.A.s because of the disabilities to fully enjoy the  
22          rights granted to them by the Fair Housing Act. Answer  
23          yes.

24                      Okay. Question eight is the only question that  
25          included the word group. Do you find that Plaintiffs

1       proved by a preponderance of the evidence the D.O.A.  
2       denied a group of people the rights that are granted to  
3       them by the Fair Housing Act.

4               So does that support Mr. Sacks' argument that  
5       the -- in view of the jury's answers to those questions?  
6       Questions four -- four, five, six, and seven that that  
7       was a finding -- in favor of the United States as the  
8       pattern or practice without regard to the requirement of  
9       a group and that's my question.

10              MR. TROY: And -- and my answer is no, Your  
11       Honor. And I want to briefly explain why. Number one,  
12       we had objected to the inclusion of Anna Minkovich on --  
13       on the -- the verdict sheet.

14              THE COURT: Yeah. You -- you did. But it's  
15       on.

16              MR. TROY: I know.

17              THE COURT: The fact that Anna Minkovich is in  
18       question number three.

19              MR. TROY: Yeah.

20              THE COURT: My question relates to four, five,  
21       six, and seven.

22              MR. TROY: Yes. And the -- and -- and -- but  
23       the issue becomes you know, with Anna Minkovich is, even  
24       though her claim was settled and done, her inclusion on  
25       the sheet, you know, it caused the problem that we feared

1           when we raised the objection. But another -- another key  
2           word in that verdict sheet, Your Honor, is unavailable.  
3           That the -- that the -- that the unit was unavailable.  
4           Because Your Honor tried to split this difficult hair of  
5           what is liability and what is damages in this case. The  
6           way that went is the Halperns were allowed to testify,  
7           that they -- they couldn't use their unit and they had to  
8           travel to and from the shore. It wasn't until we got  
9           into the phase before Your Honor, that there was evidence  
10          solicited and finally admitted to because they didn't  
11          have any choice from the Halperns that they lived  
12          overnight in this unit for -- for five plus months.

13                   THE COURT: No, I understand. You're talking  
14          about the Halperns --.

15                   MR. TROY: And even though the D.O.A. knew if  
16          they were there, but they didn't.

17                   THE COURT: Okay. For -- for whatever reason -  
18          -

19                   MR. TROY: Yeah.

20                   THE COURT: -- we had specific interrogatories  
21          about Louise Hamburg, and the Halpern, and Anna  
22          Minkovich, okay? And I thought that was necessary in  
23          view of the legal issues that you had raised to have  
24          separate verdicts, okay?

25                   So if regard to what I -- questions five --

1       when you let me straighten. With regards to questions  
2       four, five, and six, and seven, it did not revert --  
3       refer to Hamburg or Halpern or -- or Minkovich. And also  
4       didn't use the word group. What is your response as to  
5       why Mr. Sacks' argument is not correct? That the -- to  
6       the extent the statute would allow a finding of a pattern  
7       or practice, just existing without any specific  
8       consequences on either the individuals or a group. So  
9       why is that insufficient under the -- under the law?

10               MR. TROY: Sure. Two -- two points there Your  
11       Honor. First, if you're going to have a pattern or  
12       practice and I'm all for adapting plain English as the  
13       Supreme Court did in this case with the word appropriate.  
14       How can you have a pattern or practice without a number  
15       of -- a pattern applies to a number of such events;  
16       practice implies a regular practice of doing things.

17               More over, within those questions was the word  
18       available, whereas not -- unavailable, where as what the  
19       evidence have shown by the Halperns own admission before  
20       you, the unit was -- was available to them, and they used  
21       it, and the Dorchester knew the dog was there and they  
22       let them use it. And they had a photo and everything and  
23       they let them use it.

24               THE COURT: Well said. Okay. Those -- those  
25       are your -- all right. I hear you and I understand your

1 arguments. But is it possible that Congress intended  
2 that there would be liability against the apartment house  
3 for having a pattern or practice without showing specific  
4 injury of any particular individual or group?

5 MR. TROY: No. But you would need, by the  
6 plain English of the statute for there to be a pattern.  
7 Yeah, well that --.

8 THE COURT: Okay. Well that -- that is a legal  
9 issue that I'm not sure you've briefed yet and I think  
10 you should -- I'm going to give both sides an opportunity  
11 to submit briefs, okay, after this hearing. But that is  
12 a lingering question here that I think deserve some  
13 research. Now you -- it's -- if you have -- and I said  
14 before that a lot of these or many, if not most, of these  
15 cases involve racial discrimination, all right, which is  
16 not involved in this case.

17 MR. TROY: Yeah.

18 THE COURT: But I think there is a legal issue  
19 here whether Congress was entitled to allow a jury to  
20 make findings of a pattern or practice without the  
21 government having to show injury to any specific  
22 individual or group of individual. Is that your  
23 position, Mr. Sacks?

24 MR. SACKS: Your Honor, I don't think we need  
25 to reach that question the evidence shows that the

1       Dorchester's pattern or practice did hurt many people in  
2       this case. It hurt Mr. Halpern. It hurt Mrs. Halpern.  
3       It hurt Anna Minkovich.

4               THE COURT: But when you say many, you're  
5       getting into the --

6               MR. SACKS: And they -- and you heard David  
7       Michigan.

8               THE COURT: -- the same problem I have with  
9       that group, you know? The Dorchester or the evidence has  
10      like thirteen hundred or fourteen hundred residents,  
11      okay. The people about whom we heard were Ms. Hamburg  
12      who the jury found against and presumably disbelieved,  
13      the Halperns in whom they found in favor of, and Ms.  
14      Minkovich who dropped -- did not really want to pursue  
15      her claim and there was no -- had no allegations of  
16      damages. So when you come back to that, you know, I have  
17      a problem with saying its many or a group. If your  
18      position was that Congress intended this to -- up to  
19      allow a -- a jury and a judge to make findings against a  
20      -- an apartment house in this case, there could be a  
21      hotel or anything without showing specific injury to any  
22      -- any individual, I'd like to know that. But you said  
23      that's not your argument.

24              MR. SACKS: I think we're -- I think we're sort  
25      of running -- running far from the standard that we



1 understand that we're here on. We're on the Rule 50  
2 Motion and under that standard, the Courts -- the Courts  
3 have to construe the evidence in the light most favorable  
4 to the -- to the non-moving party, to the winner, to the  
5 United States in this case. And if the record contains  
6 even that minimum quantity of evidence from which the  
7 jury might reasonable afford relief, the jury's verdict  
8 must sustained, and that's a Third Circuit case in the  
9 Relington Home for the Aged.

10 THE COURT: Well you're -- you're -- you're  
11 right about that. That's the Third Circuit rule that  
12 allowed --.

13 MR. SACKS: The record has that evidence, Your  
14 Honor. It's that --.

15 THE COURT: Right.

16 MR. SACKS: Ms. Minkovich was here. She  
17 testified that the Dorchester made her cry because rather  
18 than granting her accommodation, it asked her to sell her  
19 unit. The jury assigned liability based on that.

20 THE COURT: Okay.

21 MR. SACKS: They found that the Dorchester's  
22 actions were reprehensible and they found that she was  
23 injured by it and the same thing with the Halperns, Your  
24 Honor.

25 THE COURT: All right. Okay. The next

1 question I have is Question E, and this is going back to  
2 my letter of October 20th. And this again is another  
3 reason why I prepared the chronology. When did Louise  
4 Hamburg make any untrue statement of facts separately to  
5 A, the Dorchester, B, the Department of Housing and Urban  
6 Development, or C, the Department of Justice. And I  
7 asked you to provide specific dates for those. Can you  
8 do that now?

9 MR. SACKS: Your Honor, Court's indulgence.  
10 Your Honor, can we take a short five-minute recess,  
11 please?

12 THE COURT: Yeah. But I -- I'd like to -- I'd  
13 really would like answers to those questions. Yes.  
14 We'll -- but I wonder the -- you need a bathroom break or  
15 you just want to confer with them.

16 MR. SACKS: I need to confer with my  
17 supervisor.

18 THE COURT: All right. Well, okay. All right.  
19 We'll take a five-minute recess right now. Thank you.  
20 But please, look at Question C. I would like specific  
21 dates from the government.

22 (Side Bar One Under  
23 Separate Cover)

24 THE COURT: Okay. Back on the record. Okay.  
25 So Question C One, when did Louise Hamburg make any

1 untrue statements of fact separately to Sub-A to  
2 Dorchester?

3 MR. SACKS: Okay. Your Honor, I need to  
4 correct what the Court -- what I believe the Court  
5 started with which is that we did not answer the Court's  
6 questions regarding Ms. Hamburg. We did respond in -- in  
7 our response to the Dorchester's motion for, you know,  
8 post-trial directed verdict. That's E.C.F. 335 and pages  
9 nineteen through twenty-two where we responded to the  
10 Court's questions at that time. The questions that the  
11 Court are asking now are -- are phrased differently than  
12 the Court phrased them earlier.

13 THE COURT: Yeah.

14 MR. SACKS: Regarding when Ms. Hamburg made any  
15 untrue statements to the United States, it's United  
16 States' position that she never made any untrue  
17 statements to the United States.

18 THE COURT: Well, what about her statement that  
19 she was seen by a licensed psychologist referring to  
20 Carla Black who is -- agreed is -- was not licensed?

21 MR. SACKS: Your Honor, the Court's question  
22 uses the phrase untrue statement and we simply do not  
23 know what the Court means by that. Is the Court talking  
24 -- is the Court talking about Rule 11 which is the first  
25 time we've heard of that, is the Court talking about the

1 Defendant's post-trial motion for leave which the  
2 evidence or standard standards of statement to the United  
3 States.

4 THE COURT: Mr. -- Mr. Sacks, we're getting  
5 into semantics, okay? Louise Hamburg is quoted -- is in  
6 many documents that she submitted to HUD. And which you  
7 repeated in your complaint here that she had been seen by  
8 a licensed psychologist, or a licensed -- let me get the  
9 word exactly. Hold it. Just one second. Where is that?  
10 It's here. Okay.

11 All right. The -- I'm now looking at the  
12 housing discrimination complaint filed by Louise Hamburg.  
13 This is Exhibit 125 that was admitted into evidence  
14 signed by her on 4/26. She's the complainant and this  
15 was under paragraph eight. And the third paragraph read  
16 as follows, verbatim. On December 25th, 2017,  
17 complainant emailed Respondents a letter from a license  
18 mental health professional prescribing her E.S.A. and  
19 indicated that she would be bringing the E.S.A. to the  
20 condo. The record is clear, Mr. Sacks, that she was  
21 referring to Carla Black and there's -- I don't think  
22 there's any dispute in this case that Carla Black was not  
23 a licensed mental health professional.

24 MR. SACKS: Your Honor, we -- we dispute that.  
25 We disagreed though. The evidence was that Ms. Hamburg

1 was a licensed therapist. She had a license from the  
2 State of California.

3 THE COURT: Carla Black did?

4 MR. SACKS: Yes.

5 THE COURT: You -- did any -- was that ever in  
6 evidence?

7 MR. SACKS: Yes. I believe so. I believe Ms.  
8 --

9 THE COURT: How -- how?

10 MR. SACKS: -- Hamburg testified that at the  
11 time that she received a letter from Carla Black, she  
12 understood Ms. Black was a licensed therapist.

13 THE COURT: A list -- Ms. Hamburg may have said  
14 that but she later admitted that she was not a licensed.  
15 That she was not licensed.

16 MR. SACKS: I think it's on Ms. Black's letter  
17 as well, Your Honor. Yes, here we go. I can refer to  
18 the May 17th, 2017, letter, that's D11 -- that  
19 Defendant's 115.

20 THE COURT: 125?

21 MR. SACKS: 115.

22 THE COURT: 115.

23 MR. SACKS: Yes. And at top of that letter it  
24 says, License Number 44511 California issued 4/30/07.

25 THE COURT: She also said that -- and Ms.

1 Hamburg also said that she had been treated by and  
2 evaluated by Carla Black. Is that correct? And that was  
3 all -- or that was untrue?

4 MR. SACKS: What -- when did she say it? I  
5 think that's -- I believe that's correct, Your Honor, she  
6 had been evaluated by Carla Black. Carla Black did --  
7 Ms. Hamburg did in fact fill out a long questionnaire  
8 that she testified about, and based on that evaluation,  
9 Ms. Black wrote a letter for her. Regarding, you know,  
10 her -- her claim that she's been treated by, she did  
11 received help from Ms. Black. She got this letter, and  
12 that letter allowed her to fly on planes and live in  
13 buildings that she was entitled to live in, but couldn't  
14 otherwise do because she needed her emotional support  
15 animal. So --

16 THE COURT: But when Ms. --?

17 MR. SACKS: -- and Ms. Hamburg said she did get  
18 that.

19 THE COURT: But -- but when Ms. Hamburg  
20 testified at the trial, didn't she admit that she had  
21 made misstatements to her?

22 MR. SACKS: No, Your Honor. She admitted that  
23 she had -- had -- she -- she described her word verbiage  
24 as -- as -- as an oversight and she testified that -- I  
25 believe she said that rather than saying "my therapist",

1 she should have said, "by the therapist that evaluated  
2 me" which is -- which is a very -- I guess it's different  
3 but it's -- it is a far cry from the sort of false  
4 statement or -- or untrue statements that I -- I  
5 understand the Dorchester to be accusing her of -- of  
6 doing.

7 THE COURT: All right. All right. Just one  
8 second. All right. Now, let me ask you about HUD. So  
9 we know that HUD filed a complaint against the  
10 Dorchester. Is that correct?

11 MR. SACKS: Yes, Your Honor.

12 THE COURT: Okay. Now, I am not sure if that  
13 complaint --.

14 MR. SACKS: I got a -- I'm sorry. HUD -- she  
15 filed the complaint with HUD against the Dorchester. I  
16 don't believe HUD -- HUD didn't file a complaint with the  
17 Dorchester. HUD might have informed the Dorchester that  
18 Ms. Hamburg -- that Ms. Hamburg had filed the complaint  
19 but they do not filed the complaint.

20 THE COURT: No. But they -- well -- remember,  
21 this was an issue at trial because I raised and  
22 complained about the fact that the government had never  
23 introduced any HUD regulations or any other addition --  
24 or any other evidence of what HUD did. But there is a  
25 public record that HUD had -- did file a complaint

1       against the Dorchester on July 8th, 2019. As I sit here,  
2       I'm not sure if that was ever admitted into the record.  
3       Let me just finish. No, I'm going to -- let me finish  
4       and then you can speak, all right?

5               This is -- this complaint by HUD, it's on the  
6       letterhead of U.S. Department of Housing and Urban  
7       Development, they filled -- filled off the office. And  
8       it was addressed to Stephen Williams and a law firm in  
9       Harrisburg who was then counsel for the Dorchester. And  
10      it was sent by Cheryl Johnson, Regional Counsel. And it  
11      is entitled a -- and a determination of reasonable cause  
12      and charge of discrimination. And that has a number of  
13      statements in it about Ms. Hamburg's background and the  
14      complaints that she made -- and the complaint she made,  
15      and in paragraph seventeen it says as follows.

16             In 2016 and 2017, complainant completed online  
17      questionnaires on a website. The questionnaires were  
18      evaluated by a licensed psychotherapist who concluded the  
19      complainant needed an assistance animal. The  
20      psychotherapist wrote a letter dated May 17, 2017, saying  
21      that complainant's assistance animal is necessary for  
22      emotional and mental health because its presence helps  
23      mitigate the "symptoms she experiences".

24             Now I'm not aware of anything in the record to  
25      this case that Carla Black was a licensed



1           psychotherapist. Are you?

2                   MR. SACKS: Yes, I am, Your Honor. AS I  
3           mentioned, miss -- Ms. Black was licensed  
4           psychotherapist and that's apparent from the -- the  
5           letter that was submitted into evidence. That's D11 --  
6           D115 which I'll again refer to which says -- which has  
7           Ms. -- Ms. -- it has Ms. Black's license number at the  
8           top of the page. And then also -- I also note that the -  
9           - the HUD's -- HUD's charge was filed only after they  
10          received evidence that Dr. McClymons (phonetic spelling)  
11          had evaluated Ms. Hamburg in person, you know, with a  
12          two-hour evaluation --.

13                   THE COURT: We'll -- we'll come back to that.

14                   MR. TROY: I'm not sure about that.

15                   THE COURT: Yes, you're right. I bet you're  
16          correct about that. But Mr. Troy, let me just say this,  
17          what your position is about Carla Black.

18                   MR. TROY: Yes, and thank you, Your Honor. And  
19          I -- I will go over this very specifically. The -- as to  
20          the Dorchester, the first time that -- as to the Dorch --  
21          starting Christmas day of 2017 continuing through January  
22          and February of 2018 and culminating by the Court  
23          complaint, there were repeated false statements by Ms.  
24          Hamburg. The first time she acknowledged to the  
25          Dorchester directly that she never treated with Carla

1 Black was in her deposition which I took in February of  
2 2021.

3 As to your threshold question of what did the  
4 U.S.A. know and when did they know it. As to HUD, they  
5 were aware and I have -- Mr. Perry can pull up the  
6 Exhibit 138. They were aware July 9 --.

7 THE COURT: Who's - who's they?

8 MR. TROY: HUD.

9 THE COURT: Okay. Go ahead.

10 MR. TROY: At the latest July 9, 2018, that  
11 Hamburg had lied about her relationship with Carla Black.  
12 The -- if we are able to pull that up.

13 THE COURT: All right. Well, do you concede  
14 that Carla Black was a licensed psychotherapist?

15 MR. TROY: I don't know. I know that her  
16 letter says she has a license. But the point was when I  
17 went over and it's laid out in the -- in the cross  
18 examination of Ms. Hamburg is that -- that -- that she  
19 never actually treated or saw the lady and she was  
20 representing to the contrary. And the way she was  
21 representing to the contrary was in her emails and they  
22 were Exhibit 40 to the -- the Dorchester. She was  
23 referring to my licensed therapist, and in the letter,  
24 Carla Black said, I'm helping her with her, Exhibit  
25 Forty, the Carla Black letter Page 4. I'm a licensed

1        mental health professional who is helping Louise Hamburg  
2        with her emotional, mental-health condition. And Louise  
3        Hamburg you'll remember testified and we went over edits  
4        she made.

5                    THE COURT: Yes.

6                    MR. TROY: And she edited lots of things in  
7        Carla Black's letter or McClymons' letter. But she let  
8        that stand that Carla Black was somehow her treating  
9        therapist. And she was never getting treatment. And,  
10       Your Honor, the key point is that HUD knew that because  
11       in Exhibit 138 before, Your Honor, when asked in -- in  
12       July of 2018, how are you originally connected with  
13       Black, and this is Exhibit D138, page seven. She stated  
14       that complainant stated through the website doctor.net  
15       and the website connected her to Ms. Black and went on  
16       further to be questioned at page nine finally admitted to  
17       HUD.

18                   Complainant stated in 2016, she filled out a  
19       questionnaire, which Carla Black evaluated and in 2017,  
20       she filled out another questionnaire. When asked if in  
21       either instance, Ms. Black followed up her evaluation  
22       with a telephone -- telephone interview, complainant  
23       stated she did not. Complainant stated Carla Black is  
24       not treating her and she has someone new. And this is so  
25       important, Your Honor because how did the Dorchester get

1           that HUD record which is Exhibit 138 before you. We got  
2           it from the Department of Justice in discovery. And this  
3           is where the chronology is important. And, Your Honor,  
4           you asked for dates.

5                     The Department of Justice presumably -- well, I  
6           can tell you that the D.O.A. and Louise Hamburg, HUD's  
7           findings were July 8th, 2019. There was then an election  
8           made by Ms. Hamburg and the Dorchester to have the case  
9           heard in Federal Court, that were both in July of 2019.  
10          On that same date, HUD referred the matter to the  
11          Department of Justice. This triggered the Department of  
12          Justice's involvement in this case eight months before  
13          this lawsuit was filed.

14                    Now our office's first contact with D.O.J. was  
15          with Mr. Bazwari --.

16                    THE COURT: Well your -- your particular firm -  
17          - firm was retained with the connection with this  
18          litigation.

19                    MR. TROY: Yes.

20                    THE COURT: All right. So when -- you don't  
21          need to go there.

22                    MR. TROY: Okay. But I want to -- Your Honor  
23          if I can just made it clear on the timeline with Carla  
24          Black. So the D.O.J. would have HUD's file in 2019, they  
25          would have the same information that's in Exhibit 139.

1 THE COURT: Right.

2 MR. TROY: And yet they proceed with the case  
3 and moreover in the complaint in this case in paragraph  
4 twenty-six.

5 THE COURT: Yeah. I have that here.

6 MR. TROY: Yeah. They state in there that it  
7 was, you know, through Carla Black's website. No, it was  
8 the third party website the doctor.net. They put that in  
9 their complaint despite having the information that HUD  
10 --.

11 THE COURT: Well, wait -- wait, wait a minute.  
12 Okay. So Mr. Sacks, yep. So I'd like you to cover that  
13 in -- whatever you'd like to say because Paragraphs 26  
14 and 20 -- Paragraph 26 of your complaint but -- it says,  
15 quote --.

16 MR. SACKS: And I -- I would, Your Honor. But  
17 I --.

18 THE COURT: Just a minute. Just a minute.

19 MR. SACKS: Okay.

20 THE COURT: "Attached to her email," her being  
21 -- her referring to Louise Hamburg. "Attached to her  
22 email was a May 17, 2017, letter from Carla Black, a  
23 clinical psychotherapist, which Ms. Hamburg obtained  
24 through Ms. Black's website." And then Paragraph 27  
25 continues, "the May 17, 2017, letter states that Ms.

1           Black is a licensed mental health professional who is  
2           helping Louise Hamburg with her emotional, mental health  
3           condition and that she is familiar -- and she is familiar  
4           with the functional limitations that are enclosed by this  
5           ill -- illness." Then it cites further from the letter.  
6           All right. Now, what would you like to say?

7                   MR. SACKS: There's several things. First is,  
8           Counsel is just reading from an exhibit that you excluded  
9           from trial. So again we don't --.

10                  THE COURT: So true.

11                  MR. SACKS: No.

12                  MR. TROY: We're not sure what standard we're  
13           using here to determine any of these.

14                  THE COURT: But wasn't that given and admitted  
15           to trial?

16                  MR. SACKS: It was not. It was excluded.

17                  MR. TROY: Yes, 138 was admitted.

18                  MR. SACKS: It was not, Your Honor. And I can  
19           read you the -- I can show you the transcript where --  
20           where you've excluded it because the Defendant's tried to  
21           get it through Ms. Hamburg. And Ms. Hamburg didn't  
22           recognize it because she didn't -- she didn't check. And  
23           Your Honor said, okay, she doesn't know it, like stop  
24           asking her questions about it. And that's at -- look at  
25           -- I believe it's transcript -- yes. It's the -- the

1 June 7th transcript, 2022, at pages 209 to 210.

2 THE COURT: I know. Let me just repeat that  
3 again. June --.

4 MR. SACKS: Sure. June 7, 2022.

5 THE COURT: Yeah.

6 MR. SACKS: At two -- pages two zero nine to  
7 pages two ten.

8 THE COURT: And I have this notebook, Mr. Troy  
9 that the -- that the Plaintiff's submitted or Plaintiff's  
10 submitted trial exhibit and then 138 is not included  
11 there. Do you know where --?

12 MR. TROY: Not in the Plaintiff's notebook.

13 THE COURT: Well, did you admit it?

14 MR. TROY: Yeah. We -- we had --.

15 THE COURT: Did I admit it when you offered it?

16 MR. TROY: That's my -- my recollection, Your  
17 Honor. I'm still --.

18 THE COURT: Well, you'll need to do some  
19 research into the record.

20 MR. TROY: Yeah. And I'll say, Your Honor,  
21 regardless if -- if -- if counsel is correct and I don't  
22 have the transcript in front of me. Your question is  
23 what did the -- what did the government know and when did  
24 they know it. Whether or not the jury heard it, they had  
25 this. They admit to that.

1 THE COURT: What are you holding up?

2 MR. TROY: This is Exhibit 138, the -- the HUD  
3 records. It was referred to them eight months before  
4 they filed suit.

5 THE COURT: Okay. All right.

6 MR. TROY: And, Your Honor, more importantly,  
7 you know, they -- they -- being aware of her false  
8 statements, they filed the complaint they filed. And  
9 you'll remember that they tried to keep Carla Black out  
10 of evidence, stuff about Carla Black before the trial  
11 began.

12 THE COURT: Right.

13 MR. TROY: Now if -- they -- now they want to  
14 keep the HUD record they had out of evidence and the --  
15 the false statements, they decided to prosecute the case  
16 using her as their main witness.

17 THE COURT: Okay.

18 MR. TROY: Moreover, as to Carla Black, Your  
19 Honor, the articles about her were a public record  
20 available to anyone with an internet connection. And  
21 this suit began March 12 of 2020. The State of  
22 California had already commenced its investigation in May  
23 of 2018 and had suspended her in May of 2019 for  
24 providing fraudulent E.S.A. letters to persons with whom  
25 she has never treated.



1 MR. SACKS: So she was licensed, Your Honor.  
2 The Defendant has just acknowledged that she was a  
3 licensed psychotherapist when she saw Ms. Hamburg.

4 MR. TROY: Yeah. They suspended -- the  
5 question wasn't didn't she ever have a license. I mean,  
6 I don't know that. But they suspended her in May of  
7 2019.

8 MR. SACKS: Ms. Hamburg didn't know that.

9 MR. TROY: Almost a year before they filed this  
10 lawsuit.

11 MR. SACKS: Ms. Hamburg had no idea about any  
12 of this, Your Honor.

13 THE COURT: Well, here -- here --.

14 MR. TROY: You knew about --.

15 THE COURT: This is the question -- these are  
16 the questions that I have, okay? First question is I'd  
17 like to know if it's clear -- what is clear to me and  
18 really undisputed is that Louise Hamburg first went to  
19 HUD, okay, which is entirely appropriate. Nobody can say  
20 -- she's a citizen, she has a right to make a complaint.  
21 She went to HUD, okay? The first question is, were there  
22 any, you say false -- I -- I put false statements in my  
23 letter, you know, untrue, I made untrue statements.  
24 Untrue is a broad term which we -- we don't have to talk  
25 about what it means, okay? But there is some indication

1 in -- in the overall record of this case that Louise  
2 Hamburg had reason to know that Carla Black was not the  
3 type of person that the statute is referring to when it  
4 really -- the statute here requires that someone go to --  
5 where's the exact language of that, Caroline. The --  
6 what's in the statute? What?

7 THE REPORTER: You are referring to where it  
8 says a licensed medical doctor.

9 THE COURT: A licensed medical professional.  
10 That's what --.

11 THE REPORTER: Mental health doctor, licensed  
12 for mental health.

13 THE COURT: Licensed mental, okay.

14 MR. SACKS: Your Honor, I -- I have to object  
15 here. You're making inferences about the knowledge of --  
16 of a woman --

17 THE COURT: No, no.

18 MR. SACKS: -- who is not even here to -- to  
19 tell you about it.

20 THE COURT: Yeah. Well, the record is clear  
21 though when -- when she was being cross-examined at trial  
22 that she had gone back and forth with Carla Black, trying  
23 to get Carla Black to make changes to the letter that  
24 Carla Black had submitted, isn't that correct?

25 MR. SACKS: That is and there's nothing --

1           there's nothing wrong about having --

2                       THE COURT:   Okay.

3                       MR. SACKS:   -- having specific language put  
4           into the letter so that what you know that the letter  
5           says the right things and to do what you believe you're  
6           entitled to do.

7                       THE COURT:   Okay.   Okay.   Okay.   But the point  
8           is that -- so assuming you're right that Carla Black was  
9           licensed, okay?   Let's cross that bridge, okay?   That she  
10          still -- Louise   Ham -- the jury could have concluded  
11          that Louise Hamburg did not testify truthfully about her  
12          relationship with Carla Black because -- let me just  
13          finish, because -- I promise you I'll give you your  
14          chance, because there was testimony that she was not  
15          happy with the Carla Black letter.   She knew that she had  
16          gotten to Carla Black through this website and then she  
17          knew she was never really evaluated by Carla Black.   She  
18          never saw Carla Black.   There's nothing in the record to  
19          show there was any treatment by Carla Black of Louise  
20          Hamburg.   At least I think the jury could have concluded  
21          that.   So if that's -- if the jury could have concluded  
22          that and if that could have been reason why the jury  
23          decided against Louise Hamburg, where does that leave me  
24          on the post trial motions.

25                      And the question I have is this, and the

1 importance is that HUD knew some of these facts. And the  
2 record is not clear what HUD knew or didn't know because  
3 nobody from HUD ever testified at the trial. And you may  
4 recall, I was critical of the government, but you never  
5 introduced any of the HUD regulations, or any of the HUD  
6 background, or the HUD complaint. That means it's not in  
7 the record. Now, so the one question that I have and I'd  
8 like you to include in your response is what the relation  
9 or how does the Department of Justice view its  
10 relationship with HUD. Is HUD a client? Is HUD a - it's  
11 another agency within the executive branch of government,  
12 of our Federal Government. Do you -- does D.O.J. have  
13 some responsibility when you bring a complaint like this  
14 and sign it, that you are attesting, and making the  
15 representations including the Rule 11 that you have  
16 checked these things, that you've done an investigation.  
17 Did D.O.J. do any independent investigation or did it  
18 rely completely on HUD?

19 MR. SACKS: That's --.

20 THE COURT: Did DO -- I'm not done yet.

21 MR. SACKS: All right.

22 THE COURT: Did D.O.J. get HUD's file from it  
23 and review it? Is that relevant at all? There's nothing  
24 in the trial testimony about that. But if I am -- but I  
25 am interested in Rule 11 because I think I have to and

1       now I'm not blaming any individual lawyer. But Rule 11  
2       applies to parties as well lawyers by its terms. So I  
3       have these -- these are substantial questions that I have  
4       that I think are relevant on the Dorchester J.N.O.V.  
5       motion. Go ahead. Now go ahead.

6               MR. SACKS: Oops. Okay. Great. I appreciate  
7       the -- the questions, Your Honor.

8               THE COURT: Go ahead.

9               MR. SACKS: Let's -- I think I have a few  
10       things to say here. Let's start with the -- the recent  
11       question about the relationship between HUD and D.O.J.  
12       and what we do. And what we're allowed to do under the  
13       statute before we file a claim pursuant to 3612(O) which  
14       is the statute that requires that the Attorney General  
15       shall file and maintain, and I believe that's the  
16       language a -- a claim that HUD is charged for which  
17       either party has elected to be determined in Federal  
18       Court. When that happens, the Department's -- the  
19       Department's consideration is whether or not the facts  
20       presented in the charge and in the evidence that is  
21       before the United States substantiate a claim for, in  
22       this case the deniable of reasonable accommodation, okay.  
23       That -- that is our -- that is our only consideration is  
24       whether or not the facts before us substantiate -- if,  
25       you know, we can prove them, substantiate or even the

1 facts before us, if -- if they can substantiate it, they  
2 satisfy all the elements of a reasonable accommodation  
3 claim.

4 And here, the answer is yes, and even you said  
5 this, Your Honor, when you denied the Defendant's motion  
6 for summary judgment in March. The Defendant's made the  
7 exact same arguments they are making today. They argue  
8 that you can't believe this woman. She lied on all these  
9 forms and she used Carla Black who is a fraud and a  
10 huckster. And Your Honor wisely looked at the record and  
11 determined that based on in the McClymons' letter that  
12 the elements for a reasonable accommodation denial were  
13 all there. And that is exactly what the United States  
14 did, Your Honor. We looked at all the evidence before  
15 us. And we knew that Ms. Hamburg had seen Dr. McClymons  
16 in person for a two-hour evaluation and we had his  
17 records. And we knew that -- that we knew that -- that  
18 he gave her a battery, three separate tests to evaluate  
19 her, and it all came back that she had a generalized  
20 anxiety disorder. And that she needed her assistance  
21 animal in order to basically get by with her life, and  
22 just live, and be a productive citizen like all of us  
23 want to do. So we knew all that and that is the basis  
24 for our bringing the complaint today. And I -- I --  
25 that's the basis for HUD bringing their charge as well.

1           They knew all this to be true. And they -- they knew  
2           that -- I mean, they had -- you know, they knew that she  
3           went to Carla Black. But that didn't -- that wasn't  
4           material because at the end of the day, she had seen Dr.  
5           McClymons who evaluated her in person and that -- that  
6           satisfies any standard including the one that you applied  
7           at summary judgment, Your Honor.

8           THE COURT: Okay. Thank you. All right. Now  
9           Mike, do you view HUD as a client, or not or you don't,  
10          or would you rather not have to answer that?

11          MR. SACKS: I don't know if I can answer that  
12          question, Your Honor.

13          THE COURT: All right.

14          MR. TROY: Not a client.

15          MR. SACKS: Not my client.

16          THE COURT: Well, did -- the next question, did  
17          D.O.J. do any independent investigation or just rely on a  
18          file and -- and I'd like to know if there was -- if the  
19          D. -- if the D.O.J. ever specifically talked to Louise  
20          Hamburg. Now look, you -- if -- if -- and -- look, HUD  
21          is a client, then your communications with them are  
22          privileged and I don't have any right to know. So -- but  
23          I'd like to know if -- did you ever -- did any D.O.J.  
24          personnel aside from HUD ever talk to Louise Hamburg?  
25          Did they ever review the HUD file in detail?

1 MR. SACKS: Yes, Your Honor. We spoke with  
2 Louise Hamburg and we reviewed the HUD file in detail.

3 THE COURT: Okay.

4 MR. SACKS: And --

5 THE COURT: All right.

6 MR. SACKS: -- we conducted our own  
7 investigation to determine that --

8 THE COURT: Okay. All right.

9 MR. SACKS: -- the facts supporting a denial of  
10 a reasonable accommodation claim as charge by HUD were  
11 there.

12 THE COURT: All right.

13 MR. SACKS: And under 3612(O), we're required  
14 to file that complaint.

15 THE COURT: All right. Yeah. Go ahead.

16 MR. TROY: Now, Your Honor, that clears it up.  
17 So we finally learned and to be fair in the trial, we  
18 could never get into the work product or what D.O. -- the  
19 government investigated or didn't investigate.

20 THE COURT: Right.

21 MR. TROY: Rule 11 is obviously different. So  
22 the HUD file, you -- we'll make sure you have this as  
23 part of the -- the brief. But the key issue, Your Honor,  
24 was not whether she had been ever had a license or not.  
25 The issue on her cross was that the letter from Carla



1       Black which the government now says wasn't material but  
2       which they nonetheless included and referenced in their  
3       complaint said, I am a licensed mental health  
4       professional who is helping Louise Hamburg with her  
5       emotional, mental health condition. She claimed to be a  
6       treating therapist and Louise Hamburg adopted that, ran  
7       with it at all times until, you know, and it was -- it  
8       was outright a -- a fraudulent representation. It was  
9       inaccurate and the government knew it. It's because if  
10      they had the HUD file as was just said, they knew it. We  
11      met December of '19 with Mr. Bazwari (phonetic spelling)  
12      and Mr. Romero trying to see if there was any chance of  
13      resolving this. And nobody from the -- the -- this  
14      District's office ended up doing any of the prosecution  
15      of this case. And instead they -- they bring this  
16      despite knowing what the jury was able to figure out  
17      easily, the -- the fraud that was Ms. Hamburg.

18               THE COURT: Okay. All right.

19               MR. SACKS: Your Honor, I have --

20               THE COURT: Yes.

21               MR. SACKS: -- Judge, can I add two more  
22      things.

23               THE COURT: Yes.

24               MR. SACKS: That's in response to your  
25      questions.

1 THE COURT: Yeah.

2 MR. SACKS: You had asked about why we included  
3 those paragraphs in the complaint.

4 THE COURT: Yeah.

5 MR. SACKS: And I think it's obvious that if we  
6 didn't include those paragraphs in the complaint that  
7 Dorchester would have accused us of hiding something.  
8 And we'd be back at the same place we are now. And so in  
9 the interest of sort of, you know, having all the facts  
10 in the complaint, that's what we did. We included all  
11 the facts in there including the Carla Black stuff.

12 THE COURT: Well, yeah. But you -- you didn't  
13 introduce anything about HUD in the trial. And -- and --  
14 and could -- could I make an inference that your reasons  
15 for not doing that were that there was a lot of material  
16 there. There's factual material that would have perhaps  
17 made your case less strong because of the problems that -  
18 - that Louise Hamburg and the Carl -- and Carla -- and  
19 relationship with Carla Black raised.

20 MR. SACKS: I'll say two things and it'll --  
21 it'll bring us back to where we started with the standard  
22 in this case which is as far as we're aware, we're still  
23 here on a Rule 50 motion where the Defendants are arguing  
24 that the evidence is insufficient to support the pattern  
25 or practice and the group of persons' claim. And somehow

1 we're dealing with -- with the Carla Black business at  
2 the same time.

3 MR. TROY: No.

4 MR. SACKS: If that's -- if that's the case and  
5 the Court is considering is in -- in a guise, the Court  
6 has got to make all reasonable inferences in favor of the  
7 non-moving party which is us. And so to the extent that  
8 the -- and also the Court is not allowed to make  
9 credibility determinations in a Rule 50 motion.

10 THE COURT: You're right.

11 MR. SACKS: So like, you know, like, this was  
12 given to the jury. The jury -- the jury was given all  
13 this evidence and the jury still found that the -- that  
14 Dorchester engaged in a pattern or practice and that they  
15 violated the -- the group -- the right to a group of  
16 persons. And then the -- the -- the other -- the other  
17 issue was that this -- this entire argument that the  
18 Dorchester has made has been waived. During trial, you  
19 were very specific when it came for the Defendant to make  
20 their post -- their -- their motion for a directed  
21 verdict and you said, Third Circuit says you got to be  
22 specific.

23 THE COURT: Right.

24 MR. SACKS: And they got there and they made  
25 objections. And none of them involved, you know, the --

1 the trials in the firm because Ms. -- Ms. Hamburg made  
2 false statements or allegedly made untrue statements to  
3 the United States. So as a matter of law, the Court is  
4 without jurisdiction to consider this in the guise of a  
5 Rule 50 motion.

6 THE COURT: All right. Well, if you recall,  
7 Mr. Sacks, after the charge and the jury deliberated, I  
8 made some statements on the record about my concerns of  
9 just the things that we are raising here. And Rule 11  
10 now clearly allows a Judge or his or her own motion to  
11 inquire into these things. And they're of concern to me  
12 because the depart -- the Department of Justice is the  
13 epitome of justice for our country. And there are  
14 questions that are in this case involving how the case  
15 was prepared and how you relied on when we take Ms.  
16 Hamburg. And, you know, as far as I'm concerned and I'll  
17 say on the record. I believe that to some degree Ms.  
18 Hamburg made inaccurate statements. And that inaccurate  
19 is a generic term and whether it's the same as false or  
20 not. But she clearly made inaccurate statements to HUD  
21 and -- and -- and also the jury, okay? And I can't avoid  
22 that fact. Now you made at a point earlier about how HUD  
23 waited until Ms. Hamburg saw Dr. McClymons. Did I  
24 pronounce that correctly?

25 MR. SACKS: Yes.

1 THE COURT: All right. And so -- and there's  
2 no question that he actually treated Ms. Hamburg and was  
3 a licensed mental health professional. No question about  
4 that. No, no, I'm not done yet. I mean, the question is  
5 though, does -- does Ms. Hamburg going to Dr. McClymons  
6 and the government then introducing him as a witness in  
7 the trial, does that sort of remove any taint that comes  
8 from Ms. Hamburg having made inaccurate statements to  
9 HUD, presumably the D.O.J., and also to the jury or does  
10 the fact that the government proceeded to trial with Ms.  
11 Hamburg and her inaccurate in part background contaminate  
12 the record. In fact, that I can't just say it was all  
13 wiped clean because whatever defects were in the record  
14 as to the relationship between Carla Black and Louise  
15 Hamburg were some -- some -- somewhat cleaned up when she  
16 went to Dr. McClymons who had better credentials and  
17 actually treated her. So what's your answer to that?  
18 And then we'll have Mr. Troy respond.

19 MR. SACKS: Your Honor, this -- that's the  
20 second time you've mentioned Rule 11 today. And that's  
21 in fact why we filed our motion for clarification  
22 yesterday because we wanted to know --.

23 THE COURT: Well, here, I'm clarifying it.

24 MR. SACKS: So if the -- if this -- if this now  
25 -- not -- no longer a post trial motion where -- where

1 Rule 50 applies and we're talking now about Rule 11, I'm  
2 not sure that we can answer all these -- these questions  
3 because I think the -- the source of Rule 11 is like it  
4 has to do with -- with the -- the intricacies of what was  
5 said. And it does -- you do have to parse statements.  
6 And if Your Honor doesn't want to parse statements like  
7 we tried to do, then I don't know how to respond to  
8 claims that Ms. -- Ms. -- Hamburg made untrue statements.  
9 And the second thing is that --.

10 THE COURT: Well, wait a minute. No. The --  
11 here you go.

12 MR. SACKS: I didn't even know its standard --.

13 THE COURT: Do you think -- wait, wait. Do you  
14 think because the -- the jury -- what inferences can I  
15 draw from the fact that the jury decided against Ms.  
16 Hamburg if any?

17 MR. SACKS: No. Your Honor, there's no --  
18 there's no procedure under which the Court is allowed to  
19 draw inferences from a verdict against Ms. Hamburg. Rule  
20 50 does not allow the Court to draw negative inferences  
21 from a Plaintiff interviews a verdict against her. She's  
22 no longer part of the case. She's not here, her attorney  
23 is not here, and I --.

24 THE COURT: No. I understand that.

25 MR. SACKS: So how -- there is no --.

1 THE COURT: She's -- she is not -- she is not  
2 here anymore.

3 MR. SACKS: We're not aware of any doctrine  
4 under which the Court --.

5 THE COURT: But the -- but -- but the  
6 Department of the Justice is not an ordinary Plaintiff.  
7 The Department of Justice represents the interest of the  
8 United States and its citizens. And you do a great job  
9 in many, many, many cases, and I -- and I was proud to be  
10 part of the Department of Justice for a while and I'm  
11 still proud of our Department of Justice because I think  
12 you seek the truth and you seek justice for people. And  
13 you have a very important role to play under the -- our  
14 laws and our constitution. So I have -- but you have a  
15 high burden. And the question in this case which I think  
16 I -- I can consider because I raised it while the jury  
17 was deliberating, I raised these issues. This is nothing  
18 new. I raised the issues when -- before the verdict came  
19 in. And if the jury had found in favor of Ms. Hamburg, I  
20 don't think I would have these questions anymore. But  
21 because they found against her, even though she had been  
22 treated by Dr. McClymons who came in and testified at the  
23 trial. That I think gives me some license to inquire  
24 about the fact that the Department of Justice and its --  
25 its ideals and its principles were compromised when

1 knowing what you knew about the Hamburg/Carla Black  
2 relationship, you nonetheless brought the case with her  
3 as complainant, called her as your major witness, and  
4 that's the question I have.

5 MR. SACKS: So, Your Honor, we get -- we get  
6 all sorts of complainants at the Department of Justice.

7 THE COURT: Right.

8 MR. SACKS: And people that are --.

9 THE COURT: Yeah. I mean, by the way, and in  
10 criminal -- and in criminal cases, you know, you deal  
11 with criminals all the time and when they are --.

12 MR. SACKS: Your Honor, I'm talking about the  
13 civil context here.

14 THE COURT: Yeah. Okay. Let's limit to a  
15 civil case.

16 MR. SACKS: I'm talking about the people who  
17 walk in our door and complain to us --

18 THE COURT: Yeah.

19 MR. SACKS: -- that something bad has happened  
20 to them.

21 THE COURT: Yeah. Go ahead.

22 MR. SACKS: And we get -- we get people that  
23 are -- that are, you know, you might consider neat, and  
24 we get people that -- that can't read, and probably have  
25 records. And maybe -- and maybe the thing that happened



1 to them that their complaining about is only the fifth  
2 worse thing that's happened to them that week. But we  
3 still get their complaints and we still have -- we have  
4 an obligation to bring those complaints. No -- no one  
5 that walks through our door is -- is a perfect person.  
6 And if the -- if the -- the test that I'm hearing from  
7 the Court is that if the person that comes through, if at  
8 some point in time someone might think that she said  
9 untrue then we can't bring a case on her behalf. Your  
10 Honor, we're out of business because many of the people  
11 that walk in our doors are going to have these same  
12 problems. And that is not the standard for bringing a  
13 case. Like -- like I said earlier, the standard is  
14 whether or not the facts as presented to us satisfy the  
15 elements of a reasonable accommodation claim. And the  
16 Congressman that passed that Statute 3612(0), it said  
17 that the attorney general shall file and maintain a  
18 complaint. And that -- that is our obligation, Your  
19 Honor. And we did that here. We reviewed the record.  
20 It met the elements and we filed the complaint.

21 THE COURT: Yeah. Mr. Troy.

22 MR. TROY: I need to be heard on this please --  
23 the -- the -- because I had only read part of it. But  
24 the first letter, there's misrepresentations by Carla  
25 Black to HUD, the -- I -- I presume -- I don't know what

1 she said to the D.O.J. I wasn't allowed to get into  
2 that. And more importantly there's record -- there's  
3 misrepresentations, fraudulent misrepresentations to the  
4 Dorchester, and the other owners in seeking to get this  
5 dog in. The May 17, 2016, letter Carla Black said, I am  
6 licensed mental health professional who is currently  
7 treating Louise Hamburg for her emotional and mental  
8 health condition. She said that, changed that to who is  
9 helping in 2017. She -- and that was what the cross-  
10 examination was about, not that she had a license. But  
11 the misrepresentation that she was treating with this  
12 lady. Louise Hamburg is a lawyer. She's smart, a very  
13 smart lady. She went with that fraud and she ran with  
14 it. And Your Honor, when the government brought this  
15 case, the Washington office took it, and all the lawyers,  
16 the lawyers who are on the case got out of it, and her  
17 counsel in front of you, the local office didn't do  
18 anything with it. They took a case knowing that they had  
19 obtained letters here and represent that this woman had  
20 done this in the same two years that they were trying to  
21 complain or that she suffered damages. And they were  
22 doing it, arguing that -- that this is one of many and  
23 then they recruited, and Your Honor heard how they called  
24 every resident in the Dorchester including Frank Devine's  
25 wife. They recruited like Nick Saben and the Alabama

1 High School trying to get other people to come forward  
2 and join the -- the fraudulent claims of Ms. Hamburg.

3 THE COURT: All right. My -- my question to  
4 you is, the Dr. McClymons. So he testified and you would  
5 agree he will -- he would meet the statute -- the  
6 requirements under the statute of being a licensed mental  
7 health professional, right?

8 MR. TROY: Yes. Yes.

9 THE COURT: All right. And he also -- he  
10 actually treated Ms. Hamburg.

11 MR. TROY: Yes.

12 THE COURT: All right. So does that cure any  
13 problems that arise out of Ms. Hamburg having testified  
14 and the jury having found against her?

15 MR. TROY: No, it does not at all. In fact you  
16 can rightfully infer that -- that -- and seeing where the  
17 jury found against her, that they did not find her  
18 credible. And remember that Dr. McClymons, he's the one  
19 that --.

20 THE COURT: Well, you know, how can I conclude  
21 that the jury didn't find him credible? I mean --.

22 MR. TROY: No, not him, her, you know.

23 THE COURT: Well, yes but -- but the fact that  
24 the government -- that she went to see Dr. McClymons,  
25 that he treated her, that he was licensed, and then he

1 testified in front of the jury.

2 MR. TROY: Uh-huh.

3 THE COURT: Does that cure any deficiencies  
4 that may have existed with Ms. Hamburg as a complainant  
5 called by the Department of Justice?

6 MR. TROY: No, because they chose as their only  
7 party plaintiff and regardless of the fact that she had  
8 one two-hour visit with Dr. McClymons. They had a file  
9 in which they knew that their -- their lead party  
10 plaintiff, their only party plaintiff had misrepresented  
11 for over two years, that this person -- that Carla Black  
12 was her treating therapist.

13 THE COURT: Okay.

14 MR. TROY: And that's --.

15 THE COURT: All right. Thank you. All right.  
16 Tell you what I'm going to do now, I'm going to have Dr.  
17 -- Mr. and Mrs. Halpern come up to sidebar with counsel -  
18 - on the record.

19 (Side Bar Conference 2

20 Under Separate Cover)

21 THE COURT: All right. I'm going to ask Ms.  
22 Desanti that if there's a request for a transcript that  
23 the sidebar transcript would be separate from the rest of  
24 the hearing today, okay. And I'm not saying it has to be  
25 under seal. But it should just be a -- a separate

1 transcript. All right. All right. I just want to see  
2 if I have -- all right. So let me -- I want to go back  
3 to one of my questions, Mr. Sacks. And this is under --  
4 this is C two. C two is the Crowley. Does the record  
5 allow the Court to conclude that the government filed  
6 this case knowing that Louise Hamburg had made any one or  
7 more of these false statements before or after the  
8 complaint was filed? Your answer if I understand it, is  
9 that you did not -- the government did not consider that  
10 Louise Hamburg had made any false statements. Is that  
11 correct?

12 MR. SACKS: Not that we didn't consider that.  
13 We didn't think that she made any untrue statements to  
14 us.

15 THE COURT: And you still think that?

16 MR. SACKS: Yes.

17 THE COURT: All right. Okay. Wait. Okay.  
18 That was D. What does the record show as to when the  
19 Dorchester adopted a policy concerning emotional support  
20 animals? Is he correct that Dor -- that the Dorchester  
21 did not allow any emotional support animals until after  
22 the government filed this case in 2020. What's your  
23 position or what's the government position about that?

24 MR. SACKS: The answer to the second question  
25 is yes, that Dorchester did not allow any emotional

1 support animals in until they granted Mr. Halpern's  
2 accommodation request in June of 2020 which is --

3 THE COURT: Okay.

4 MR. SACKS: -- three months after United States  
5 filed its complaint in this matter.

6 THE COURT: All right. Now you wanted to bring  
7 up the issue of punitive damages. So now is your chance  
8 to explain that.

9 MR. SACKS: Your Honor had another -- Your  
10 Honor had another question about when the Dorchester  
11 first adopted an emotional support animal policy.

12 THE COURT: Yes.

13 MR. SACKS: It is -- the Dorchester did not  
14 adopt an emotional support animal policy until April of  
15 2019. And that is shown in Plaintiff's Nine, and  
16 Plaintiff's Ten which are the meeting minutes from the  
17 Dorchester I believe in April of 2019 and maybe -- maybe  
18 May of 2019. So prior to that, the Dorchester had an  
19 assistance animal policy that simply did not contemplate  
20 emotional support animals. And because of that, that is  
21 in fact why the Dorchester sent -- had to -- had to  
22 develop a policy after the Halperns applied in October of  
23 2018 which resulted in -- in the Dorchester making the  
24 Halperns fill out a second application in June of 2019.

25 THE COURT: Okay.

1 MR. SACKS: So prior to April of 2019, the  
2 Dorchester simply did not, you know, allow emotional  
3 support animals.

4 THE COURT: All right. All right. Now what  
5 did you -- what would you like to say about punitive  
6 damages?

7 MR. SACKS: Regarding --?

8 THE COURT: Mr. Troy, have a seat. You can --

9 MR. TROY: Okay.

10 THE COURT: -- I'll give a couple of minutes  
11 when he stops. I'm sure you're against punitive damages.  
12 But I want to be -- I promised to give Mr. Sacks the  
13 opportunity to explain why he thinks punitive damages  
14 should be awarded.

15 MR. SACKS: Yes, Your Honor. I -- I would  
16 start with the standard. I -- we do believe -- the  
17 United States does believe that punitive damages are  
18 appropriate in this case. And under *Kolstad versus*  
19 *American Dental Association*, 527 U.S. 526, and *Alexander*  
20 *versus Riga* which is a case that we cited at length in  
21 our -- in our post trial briefing regarding a -- a --  
22 regarding punitive damages.

23 Punitive damages are appropriate and warranted  
24 when the Defendant acts with -- with -- with the  
25 knowledge or "a perceived risk that their actions could

1 be in violation of Federal civil rights laws." And here,  
2 the evidence show us exactly that. We know from Mr. --  
3 from Mr. Devine's testimony that in 2015, he began  
4 researching the Fair Housing Act in order to come up with  
5 an assistance animal policy. And at that time, he  
6 reviewed HUDs 2013 guidance which provided that emotional  
7 support animals are a -- a form of reasonable  
8 accommodations. So as of -- as of 2015, Mr. Devine knew  
9 that emotional support animals were required in the Fair  
10 Housing Act. And then again in 2017, we all know that  
11 the Third Circuit issued Revock versus Cowpet Bay in  
12 which the Third Circuit which is the binding -- binding  
13 rule -- binding the Court in this jurisdiction. They  
14 also said, if there was any doubt that reasonable  
15 accommodations were required -- sorry, that emotional  
16 support animals were required into the Fair Housing Act  
17 so the Dorchester knew or knew this when it enacted its -  
18 - its -- its policy. Yet in -- it wasn't until 2019 that  
19 the Dorchester had a policy that even -- even allowed for  
20 emotional support animals. So in -- in drafting the  
21 private policy and acted with the -- with the knowledge  
22 that what it was doing was not -- was not allowing for  
23 and not honoring the rights of people that needed  
24 emotional support animals.

25 Now there's other evidence too that shows that



1 the -- the Dorchester acted with the sort of malice and  
2 reckless indifference in this case that work -- that --  
3 that justifies punitive damages. We heard from -- we  
4 heard from Ms. Minkovich, what happened to her, and how  
5 rather than allow her to proceed with her reasonable  
6 accommodation request, they had a meeting with her. And  
7 they -- they told her that she should sell her unit  
8 rather than go forward. So -- and she had a right to an  
9 accommodation, Your Honor. And rather than let her have  
10 that right, they -- they -- they made her cry, Your  
11 Honor. And -- and they tried to get her to sell her  
12 unit. We also heard from the -- the Dorchester's own  
13 council members. We heard from Joe Morgan, and we heard  
14 from Ed Cortland, and we heard from Joe Weiss. And all  
15 of them expressed disdain for emotional support animals.  
16 And -- and -- or they otherwise stated that they didn't  
17 believe people needed them. So we know that the decision  
18 makers in this case, they didn't even believe that  
19 emotional support animals were -- were an accommodation  
20 under the Fair Housing Act. And we also have -- we also  
21 have the -- the email or the emails that the Dorchester  
22 circulated right around the time that they were  
23 considering Ms. -- right around the time that the  
24 Halperns first applied for an accommodate -- or first  
25 approached the -- the Dorchester regarding an

1 accommodation request. And they -- they exchanged emails  
2 making fun of therapy horses. They -- they joked about  
3 which -- which unit the therapy horse would go in. So we  
4 know that the Dorchester acted with this sort of malice  
5 that punitive damages require.

6 And, Your Honor, there needs to be punishment  
7 so that the next condo association knows that it cannot  
8 discriminate under the Fair Housing Act. If the  
9 Dorchester only receives a slap on the wrist, which is --  
10 which is what their seeking, then -- then the next condo  
11 association is going to make the same decision that they  
12 did. It is going to say you know what it's unlikely that  
13 we're going to get punished for this and we might as well  
14 just deny the reasonable accommodation and -- and roll  
15 the dice and we're going to get off with a slap of the  
16 wrist as well. So the jury has found that the Dorchester  
17 violated the Fair Housing Act in numerous ways. And the  
18 Court should render a judgment that -- that honors that  
19 and awards punitive damages.

20 THE COURT: Okay. Thank you. All right, Mr.  
21 Troy.

22 MR. TROY: Your Honor, I want to start with  
23 your first question about that policy. The Dorchester  
24 adopted a reasonable accommodation policy in 2015 that  
25 would apply to any requests such as this. After

1        Pennsylvania adopted new laws concerning assistance  
2        animals, the Dorchester adopted an updated policy April  
3        3, 2019. And this was all on the record. After HUD  
4        issued guidance January 28, 2020, the Dorchester adopted  
5        -- issued an updated policy March 4, 2020. This board is  
6        doing this. There's no lawsuit filed at this point.  
7        They're doing all this to do their best to comply with  
8        the law. What we then did and you saw this, we as  
9        counsel, sent this to counsel for the government, Mr.  
10        Bazwari to Exhibit D301 and we said is this good, March  
11        4, 2020. Is this policy good? Because we're trying to  
12        resolve this. We're trying not to be here. It's nice to  
13        be here with you, Your Honor, and thank you for your time  
14        very much on behalf of all the unit owners. But were  
15        trying not to be here. We got no response from Mr.  
16        Bazwari. You saw that and instead, eight days later they  
17        filed the lawsuit because they wanted to make a public  
18        splash with this, riding the fraudulent claims of Louise  
19        Hamburg. That's what's going on here. That's why they  
20        were recruiting. After the first phase of trial, in an  
21        attempt again, the D.O.A. adopted an updated policy, July  
22        5, and -- and that was provided to Plaintiff's counsel  
23        who had indicated approval provided we could work out the  
24        financial aspects. That was Exhibit D307. All of this  
25        shows good faith attempts to comply with the law, Your

1 Honor, completely different from the cases cited by  
2 Plaintiff concerning punitive damages. And as to March  
3 of 2020, to your question, at that time, the Minkovich  
4 was pending but the Halperns -- remember their dog Gracie  
5 had died in January. When this suit was filed, there was  
6 no pending request from the Halperns. Gracie had passed  
7 away. And they didn't get the next dog until, I think it  
8 was April or early May that they submitted a new request.  
9 And this time without an internet letter from Anne Miller  
10 in which the Dorchester had been suspicious of because of  
11 what they learned with Carla Black. Without that, the  
12 Dorchester promptly granted it. And they've granted six  
13 animals total since, basically everybody except Louise  
14 Hamburg.

15 So this is absolutely not a punitives case in  
16 any way. Any delay here, when you look at this record,  
17 any delay here is caused by the government's failure to  
18 just refuse to say anything to the Dorchester in response  
19 to attempting to craft an acceptable policy or in the  
20 case of the Halperns, you remember they were sent the  
21 questions, ten questions because of the internet letter  
22 from Anne Miller. Will you answer this for us? They  
23 said they didn't like question ten so they never  
24 responded, so Mrs. Halpern's unwillingness to engage in  
25 the interactive process with the DOA. And she refused --

1 and she admitted to refusing to answer those questions.  
2 So, Your Honor, what you see here and have before you in  
3 the D.O.A. is not anything like any of the -- the  
4 Defendants in the case as cited by the Plaintiff's. You  
5 have an organization with a board. I don't know --  
6 hearing -- if anyone learned of this case, I don't know  
7 why anyone would ever want to serve on such a board with  
8 the sacrifice they make and here with accusations such as  
9 this. But -- and you also have I should point out, in  
10 the trial, you have the testimony of Ms. Yahna Halva  
11 (phonetic spelling), Mr. Maloney, and Frank Divine. All  
12 of which are in the transcript of what their trying to do  
13 particularly Ms. Yahna Halva. And we're trying to get  
14 HUD to give us feedback. They're -- they keep trying and  
15 they can't get any help from the government.

16 THE COURT: Okay.

17 MR. TROY: So the government in this case, Your  
18 Honor, has never been a help to emotional support animals  
19 and they have been nothing but a hindrance and that's  
20 what the record reflects. Thank you.

21 THE COURT: Okay. All right. Thank you. Mr.  
22 Troy, one of the things, just a loose housekeeping. On  
23 October 17th, the government filed a -- a brief that I  
24 had requested during the form of judgment. I don't think  
25 you've responded yet, but I would like you to respond if

1           you want to.

2                   MR. TROY: Okay. We will file a response.

3                   THE COURT: It was E.C.F. 267.

4                   MR. TROY: Yep. I --

5                   THE COURT: All right. Now the next question  
6           is whether either of your or both want to file anything  
7           subsequent after this concerning the chronology that I  
8           submitted.

9                   MR. SACKS: Yes, Your Honor. The United States  
10          would like to file a response, you know, to the --

11                  THE COURT: All right. How much time do you  
12          need --

13                  MR. SACKS: -- court chronology.

14                  THE COURT: --what -- and I'd like it done on  
15          the same day to have a joint filing. So I'm not -- I'm  
16          not going to pressure you, you know. But I'd like to --

17                  MR. SACKS: I mean, I -- I honestly, I have --  
18          I have work travel the next two weeks. So that's --.

19                  THE COURT: All right. You're going to have  
20          that by the end of November.

21                  MR. SACKS: If we can have three days. That  
22          would be --

23                  THE COURT: Does that give you enough time?

24                  MR. SACKS: The end of November would be --  
25          would be appreciated. Your Honor.

1 THE COURT: Does that work for you, Mr. Troy?

2 MR. TROY: It does, Your Honor. And just so  
3 we're clear, when you say a joint filing, you're not  
4 suggesting we would agree on the chronology.

5 THE COURT: Yes.

6 MR. TROY: But you want it done. Everybody has  
7 seen the other --

8 THE COURT: Well, what I'd like you to do is to  
9 take my chronology --

10 MR. TROY: Yeah.

11 THE COURT: -- and either submit objections or  
12 -- or disputes if you don't think it's accurate and/or  
13 add things that I did not include.

14 MR. SACKS: Yes. That's exactly what -- what  
15 we were planning on doing, Your Honor.

16 THE COURT: Yeah.

17 MR. SACKS: And that -- that takes us to our  
18 next question. And that's that we're still not sure what  
19 the record is because the Court and -- and -- and Mr.  
20 Troy were referring to a -- a document that was -- that  
21 you, that Your Honor excluded from the record. So I --  
22 you know --.

23 THE COURT: Okay. Well, I'll tell you what  
24 we'll do. You'll both file on November 30th. And then  
25 by December -- what's two weeks after that? We're about

1 December 14.

2 MR. TROY: December 14.

3 THE COURT: Right.

4 MR. TROY: And I'm assuming it would be  
5 December 14, Your Honor.

6 THE COURT: Yeah. But so I'll say 14 days,  
7 plus 14, and you can then file objections to the other's  
8 chronology.

9 MR. SACKS: And again are we -- like the United  
10 States would like to know whether or not we are limited  
11 to evidence on the record, admitted to trial.

12 THE COURT: Okay. Here's -- here is my point  
13 of view, but you're -- you -- you don't have to accept  
14 this. I think clearly anything that was admitted in the  
15 trial is -- is -- is appropriate, okay, whether testimony  
16 or exhibits, all right? But I don't think it's useful to  
17 -- well, I'll leave it like that. That you can put  
18 anything in the chronology that was in the trial record  
19 either -- okay. I also think that either side can put  
20 into the chronology public documents created by HUD  
21 because HUD is a government agency and it -- and it if --  
22 if for example we could not find the HUD complaint in the  
23 actual trial evidence, okay? But I think either party  
24 could refer to that because HUD is a government agency  
25 and it was a -- and it was filed of record with HUD



1           although its not -- HUD is not a Court obviously. But we  
2           know exactly what their complaint is because it was part  
3           of the pretrial exhibits. But we can't find if it was  
4           admitted into the trial record.

5                   MR. SACKS: Your Honor, there's another issue  
6           that's related to this and that's that on -- on the  
7           Court's chronology, there's made -- there's references  
8           that are made to -- to -- to an event that occurred where  
9           the Court says no evidence of the 2014 diagnosis was  
10          presented and that's the May 17, 2016, entry on -- on the  
11          Court's chronology. Now that's -- that's the -- there --  
12          there is evidence of a 2014 diagnosis and that's through  
13          -- Ms. Hamburg saw a psychologist in 2014.

14                   THE COURT: Right.

15                   MR. SACKS: A licensed psychologist named Dr.  
16          Rebecca Harvey and there was some testimony about her  
17          that -- that is not mentioned by the Court and we'll --  
18          we'll correct the record.

19                   THE COURT: Yeah. All right.

20                   MR. SACKS: But there's also documents that we  
21          presented to the Defendant during discovery that confirm  
22          that Ms. -- that Dr. Harvey evaluated Ms. Hamburg and  
23          diagnosed her with general anxiety disorder and actually  
24          wrote her a letter to that effect.

25                   THE COURT: Right.

1 MR. SACKS: And that I think is relevant to  
2 this because if the Court is --

3 THE COURT: All right.

4 MR. SACKS: -- of the Court sort of wants to  
5 know about the -- the mindset of Ms. Hamburg when -- when  
6 she -- when she fills out the form on the doctor  
7 questionnaire, it should know what Ms. Hamburg knew, and  
8 that that's she had been diagnosed in 2014 by Dr. Rebecca  
9 Harvey.

10 THE COURT: Yeah. Okay. All right.

11 MR. SACKS: So I'd like to include that as  
12 well.

13 THE COURT: Fair.

14 MR. TROY: And yeah, Your Honor, those -- we  
15 got those records after discovery closed. With that  
16 being said, it sounds like what you're telling us is just  
17 to indicate was it admitted or not when we cite to  
18 something and that's not difficult.

19 THE COURT: Well, I don't want to prevent  
20 anybody from submitting something they think is --

21 MR. TROY: Yeah.

22 THE COURT: -- is relevant to the issue sort of  
23 pending here.

24 MR. TROY: Yep.

25 THE COURT: But as I said, you know, I'm

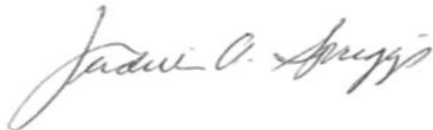
1 repeating myself, because the Department of Justice is  
2 the Plaintiff here, in my view they have a higher burden  
3 than an ordinary Plaintiff does in filing civil  
4 litigation. That's the reason for my concern. All  
5 right. I'd like to see Mr. and Mrs. Hal -- Halpern up  
6 here again because you're not Mr. and Mrs. -- the  
7 Halperns come on up.

8 MS. HALPERN: Okay.

9 (Off-the-record)

10 CERTIFICATION

11 I, Judith Spriggs, court approved transcriber, certify that  
12 the foregoing is a correct transcription from the official  
13 electronic sound recording of the proceeding in the above-  
14 entitled matter.

15  
16   
17

18 \_\_\_\_\_/  
Judith Spriggs

19 Associated Reporters Int'l., Inc. 6th day of November, 2022

A	
<b>a.m</b> 1:7	<b>afford</b> 33:7
<b>A.S.A.s</b> 27:21	<b>Aged</b> 33:9
<b>Ab</b> 24:22	<b>agency</b> 52:11 80:21,24
<b>able</b> 11:18 12:14 25:15 42:12 57:16	<b>agenda</b> 7:1
<b>abled</b> 27:15	<b>aggrieved</b> 24:17
<b>above-</b> 83:13	<b>agree</b> 4:21,21,22 11:16,18 14:6 26:8 67:5 79:4
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